IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

OP.No. 27504 of 2001(Y)

PETITIONER:

REYNOLDS MICHAEL GEORGE, FOREMAN GRADE I,
TRANSFORMER DIVISION, DESIGN OFFICE, RESIDING AT
CHERIAKAKRAMSSERY HOUSE, P.T.JACOB ROAD,
COCHIN - 682 005.

BY ADV. SMT.MOLLY JACOB
SMT.AYSHA YOUSEFF
SMT.RABIA BEEGAM T.K.

RESPONDENTS:

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1. KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, 7TH FLOOR,
HOUSING BOARD OFFICE COMPLEX, COCHIN 36.

2. GENERAL MANAGER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD.,
MAMALA.P.O., COCHIN - 682 305.

3. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVT.
INDUSTRIES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

GOVT.PLEADER SMT.BINDU.
BY ADV. SRI.K.A.JALEEL
SRI.V.E.ABDUL GAFOOR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 28/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DISMISSED.

28/11/2006. SD/- A.K.BASHEER, JUDGE.

APPENDIX

EXT.P1: PHOTOCOPY OF MEMO DT. 10.8.68.
EXT.P2: TRUE COPY OF ORDER DT. 20.8.69.
EXT.P3: COPY OF ORDER ISSUED BY SECOND RESPONDENT.
EXT.P4: PHOTOCOPY OF RELEVANT PORTION OF PROMOTION POLICY.

EXT.P5: PHOTOCOPY OF LETTER DT. 6/11/1982.

EXT.P6: PHOTOCOPY OF LETTER DT. 16/3/85.

EXT.P7: PHOTOCOPY OF LETTER 12/5/86.

EXT.P8: PHOTOCOPY OF ORDR DT. 9/7/1988.

EXT.P9: PHOTOCOPY OF AGREEMENT.

EXT.P10: PHOTOCOPY OF REPRESENTATIOND T. 6/11/1992.

EXT.P11: DO. DT. 16/8/96.

EXT.P12: PHOTOCOPY OF LETTER DT. 5/2/97.

EXT.P13: DO. DT. 17/3/97.

EXT.P14: PHOTOCOPY OF LETTER DT. 31/3/97.

EXT.P15: DO. DT. 17/6/94.

EXT.P16: DO. DT. 8/7/99.

EXT.P17: PHOTOCOPY OF MINUTES.

EXT.P18: PHOTOCOPY OF ORDER DT. 20/10/99.

EXT.P19: PHOTOCOPY OF MEMORANDUM OF SETTLEMENT.

EXT.P20: PHOTOCOPY OF PAY SLIP.

EXT.P21: DO.

EXT.P22: PHOTOCOPY OF R EPRESENTATION DT. 9/2/2001.

EXT.P23: PHOTOCOPY OF ORDER DT. 10/6/89.

EXT.P24: PHOTOCOPY OF ORDER DT. 11/3/82.

EXT.P25: PHOTOCOPY OF LETTER DT. 20/4/82.

EXT.26: TRUE COPY OF LETTER BY L.I.C.
EXT.P27: TRUE COPY OF LETTER ISSUED BY HDFC.

EXT.P28: TRUE COPY OF SALARY STATEMENT.
EXT.P29: OFFICE ORDR DT. 20/9/2003.
EXT.P30: PAY SLIP OF PETR. FOR MAY 2003.
EXT.P31: STATEMENT REGARDING PAY FIXATION.
RESPONDENTS' EXHIBITS:
EXT.R2(A): TRUE COPY OF REFIXATION DT. 1.7.98.
EXT.R2(B): TRUE COPY OF OFFICE ORDER ISSUED BY MANAGER (P & a)

A.K. Basheer, J.

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O.P.No. 27504 of 2001-Y

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Dated this the 28th day of November, 2006.

J U D G M E N T

Grievance of the petitioner who is working as Foreman, Grade I in the Transformer Division (Design office) in the Mamala Unit of Kerala Electrical and Allied Engineering Co. Ltd. (for short, the Company) is that he was denied grade promotion on his completion of 15 years in the post of Draftsman, Grade I. The primary prayer in the writ petition is to fix his basic pay after reckoning his eligible service for grade promotion with effect from the date it became due. The other prayers which are ancillary or incidental to the primary prayer are not being referred to now, since the petitioner would be entitled to get those benefits, if the primary prayer is allowed.

2. Shorn of unnecessary details, the relevant facts which are necessary for the disposal of this writ petition may be briefly noticed.

3. Petitioner had joined the service of the Company as Draftsman trainee in the year 1968. He was promoted as Semi Skilled Worker in 1969. Thereafter he was promoted as Draftsman Grade I in the year 1977. According to the petitioner he had been stagnating in the above post of Draftsman, Grade I for more than 22 years till 1999, when he was promoted as Foreman, Grade I. It is beyond controversy that the cadre of Foreman, Grade I is managerial, whereas Draftsman, Grade I is in the workman category. It is the contention of the petitioner that on completion of 15 years as Draftsman, Grade I, he ought to have been given grade promotion.

4. In answer to the above contention, learned counsel for respondents 1 and 2 submits that petitioner was given the benefit of revised pay scale and all other attendant benefits attached to the post of Foreman, Grade I from the date of his promotion in the year 1999. Petitioner could not be promoted earlier because no vacancy was available. It is true that the Government had issued Ext.P16 order to redress the grievance of those workmen who had been stagnating for years without any avenue for promotion. In Ext.P16 the Government had ordered promotion of 12 seniormost chargehands who had put in more than 25 years of service, to the grade of Foreman on certain conditions. Since the petitioner did not fall in the category of Chargeman who had completed 25 years, he was not promoted at that time. It is further pointed out by the learned counsel that petitioner was promoted as per Ext.P18 order to the cadre of Foreman, Grade I with effect from July 8, 1999. His basic pay in the promoted post was fixed at Rs.2,000/- in the scale of pay of Rs.1600-50-2300-60-2700. Learned counsel further submits that petitioner is not entitled to get the benefit of Ext.P16 nor can he be heard to say that he ought to have been given the benefit of grade promotion on completion of 15 years.

5. I am afraid that the above contention raised by the learned counsel for respondents 1 and 2 cannot be sustained. It is pertinent to note that in Ext.P16 order the Government had granted permission to create a new scale of pay in the workman grade in the case of those charge hands who had completed 15 years of service and had attained eligibility for grade change as per promotion policy agreement. It is beyond controversy that petitioner falls within this category. As noticed earlier, there is no dispute that petitioner had completed 15 years in the cadre of Draftsman, Grade I in the year 1992. Therefore he ought to

have been given the benefit of grade promotion on completion of 15 years. This was made clear in Ext.P16. Therefore there is considerable force in the contention raised by the petitioner that respondents 1 and 2 were not justified in denying the benefit of grade promotion to him.

6. Learned Standing Counsel points out that it is not grade promotion but a new scale of pay that was directed to be created in the case of those who had completed 15 years. Be that as it may. Whatever benefit the petitioner might have been entitled to get on completion of 15 year's service ought to have been given to him. This was denied to the petitioner. The said action of respondent 1 and 2 cannot be justified. In this context it is also pertinent to note clause 27 of Ext.P4 promotion policy which reads thus:

> "27. Any workman who does not get a promotion or grade change for a period of 15 years will be given grade change to the next higher grade.

In my view, Ext.P16 is in consonance in complete accord with clause 27 of Ext.P4 promotion policy formulated by respondents 1 and 2.

7. It has to be remembered that petitioner had specifically asserted that two other similarly placed employees who had got promotion as Foreman, Grade I were given the benefit of higher scale of pay compared to that of the petitioner. Exts.P23 and P24 are stated to be orders issued by respondent No.1 in the case of those two employees. As rightly contended by learned counsel for the petitioner, respondents 1 and 2 have not specifically refuted the above contention raised by the petitioner.

8. In the above facts and circumstances I am satisfied that

petitioner is entitled to get the benefit of grade change or higher grade on completion of 15 years of service as Draftsman, Grade I in the year 1992. It is true that in Ext.P17 it has been made clear that financial benefits on account of grade change would be extended only from October 1, 1999. This means that petitioner may not be entitled to get any financial benefits, though he may be entitled to get a higher grade with effect from 1992. Learned counsel submits that petitioner would be satisfied if he is given the grade change or higher grade with effect from 1992 till 1999 when he was promoted as Foreman, Grade I.

9. Therefore respondents 1 and 2 are directed to pass appropriate orders granting higher grade to the petitioner with effect from the date of completion of 15 years in the cadre of Draftsman, Grade I. All consequential benefits arising therefrom shall be granted to the petitioner. This shall be done as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

As regards the grievance of the petitioner that he has been denied the benefit of Ext.P19 settlement, it is made clear that it will be open to the petitioner to approach respondent No.1 and submit a representation in this regard highlighting his grievances. If such a representation is received, respondent No.1 shall consider the same and pass appropriate orders thereon on its merit and in accordance with law , as expeditiously as possible at any rate within two months from the date of receipt of a copy of this judgment.

A.K. Basheer
Judge.

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A.K. BASHEER,J.

O.P.NO. 27504/2001

JUDGMENT

28/11/2006.